

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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PITTSFIELD GENERATING COMPANY, L.P.,

Plaintiff,

v.

DEVON CANADA CORPORATION,

Defendant.

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Civil Action No:  
04-30128-MAP

**DEFENDANT DEVON CANADA CORPORATION'S MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), defendant Devon Canada Corporation ("Devon") hereby moves to dismiss the Complaint for Declaratory Judgment filed by plaintiff Pittsfield Generating Company, L.P. ("PGC") for lack of personal jurisdiction or, alternatively, on grounds of forum non conveniens. Contemporaneous with this filing, Devon has filed a Motion to Stay in Deference To a Pending Foreign Proceeding. Should the Court grant the motion for a stay, this Motion to Dismiss need not be reached.

In support of its Motion to Dismiss, Devon states as follows:

1. This Court lacks personal jurisdiction over Devon because (a) Massachusetts' long-arm statute, Mass. Ann. Laws ch. 223A, § 3 (2004), does not authorize jurisdiction over Devon and (b) the exercise of personal jurisdiction does not comport with the due process requirements of the United States Constitution.

2. Even if this Court has personal jurisdiction over Devon, which is not admitted but denied, this case should be dismissed under the doctrine of forum non conveniens because (a) the Province of Alberta, Canada is available as an adequate alternative forum, and (b) the balance of private and public interests favors the Province of Alberta as the forum for litigating this dispute.

3. The Court of Queen's Bench of Alberta, Judicial District of Calgary, has determined that with respect to a parallel action involving a similar dispute, the Alberta court has jurisdiction over PGC and the Alberta forum is the most appropriate and convenient forum in which to litigate the dispute.

A Memorandum of Law in support of this Motion is included herewith and incorporated herein by reference.

WHEREFORE, defendant Devon Canada Corporation respectfully requests that the Court grant this Motion, and dismiss plaintiff Pittsfield Generating Company LP's Complaint for Declaratory Judgment for lack of personal jurisdiction or, in the alternative, on grounds of forum non conveniens.

Dated: September 17, 2004.

Respectfully submitted,

/s/ Anita B. Bapooji  
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Of Counsel  
Devon Canada Corporation

**CERTIFICATION UNDER LOCAL RULE 7.1**

I certify that on Wednesday, September 15, 2004, pursuant to Local Rule 7.1, counsel for the parties have conferred in good faith regarding Defendant Devon Canada Corporation's Motion to Stay in Deference to a Pending Foreign Proceeding and were unable to resolve or narrow the issues.

/s/ Anita B. Bapooji

Anita B. Bapooji

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant Devon Canada Corporation's Motion to Stay in Deference to a Pending Foreign Proceeding was served, via hand delivery on the 17<sup>th</sup> day of September, 2004 on the following:

Robert J. Muldoon  
David A. Brown  
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101 Federal Street  
Boston, MA 021100

/s/ Anita B. Bapooji

Anita B. Bapooji